

Department of Veterans Affairs

§ 3.340

CROSS REFERENCE: Failure to report for VA examination. See § 3.655.

[26 FR 1585, Feb. 24, 1961, as amended at 30 FR 11855, Sept. 16, 1965; 36 FR 14467, Aug. 6, 1971; 55 FR 49521, Nov. 29, 1990; 60 FR 27409, May 24, 1995]

§ 3.328 Independent medical opinions.

(a) *General.* When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are not employees of VA. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) *Requests.* A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her duly appointed representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Veterans Service Center Manager of the office having jurisdiction over the claim, and those requests which in the judgment of the Veterans Service Center Manager merit consideration shall be referred to the Compensation and Pension Service for approval.

(c) *Approval.* Approval shall be granted only upon a determination by the Compensation and Pension Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation and Pension Service shall obtain the opinion. A determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) *Notification.* The Compensation and Pension Service shall notify the

claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall be subject to the special procedures set forth in § 1.577 of this chapter.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

[55 FR 18602, May 3, 1990]

§ 3.329 [Reserved]

§ 3.330 Resumption of rating when veteran subsequently reports for Department of Veterans Affairs examination.

Such ratings will be governed by the provisions of § 3.158, "Abandoned Claims," and § 3.655, "Failure to report for Department of Veterans Affairs examination." The period following the termination or reduction for which benefits are precluded by the cited regulations will be stated in the rating. If the evidence is insufficient to evaluate disability during any period following the termination or reduction for which payments are not otherwise precluded, the rating will contain a notation reading "Evidence insufficient to evaluate from _____ to _____."

CROSS REFERENCE: Failure to report for Department of Veterans Affairs examination. See § 3.655.

[29 FR 3623, Mar. 21, 1964]

§§ 3.331–3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) *Total disability ratings—(1) General.* Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.